

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

WRIT PETITION NO. 3448 OF 1999.

Annarao Baloba Gaikwad	... Petitioner.
V/s.	
Kantilal B. Shah	... Respondent.

Shri A.A. Kumbhakoni for the petitioner.

Shri Nitin Jamdar with Vijay Killedar for the respondent.

CORAM : V.C.DAGA, J.

DATED : 31.8.2006.

JUDGMENT:

. Heard rival parties.

. Perused petition with the assistance of the advocates appearing for the parties.

2. This petition is directed against the order dated 29.8.1998 passed in Appeal No. 62 of 1994 by the District Judge, Solapur, dismissing appeal filed by the petitioner-landlord and thereunder confirming the judgment and decree passed by the trial Court dated 12.10.1993 passed by the Civil Judge, JD, Solapur, in Reg.Civil Suit No. 485 of 1985, whereby the suit filed by the petitioner, original plaintiff against the defendant for recovery of possession of the suit premises came to be dismissed.

3. Factual matrix reveals that the petitioner-original plaintiff is the owner of City Survey No. 8292/B bearing Municipal House No. 12-A, consisting of 4 rooms as per the details of the boundaries mentioned in the para 1 of the plaint ('suit premises'), of which defendant is a monthly tenant.

4. Plaintiff filed a suit against the defendant for arrears of rent and possession, contending that the defendant is in arrears of rent and that the defendant has, without consent of the plaintiff erected a permanent structure on the suit premises and that the defendant has damaged the suit premises and thereby committed an act which is destructive or permanently injurious to the suit premises. In addition to these grounds, ground of bonafide need of the petitioner-plaintiff was also pressed into service.

5. On being summoned, defendant appeared and denied the case sought to be made out by the petitioner-plaintiff. The trial Court was pleased to frame issues relevant to the pleadings and permitted the parties to lead evidence on their behalf.

6. The trial Court after appreciation of

evidence of the parties was pleased to hold that standard rent of the suit premises was Rs. 34.65 p.m. It was further held that the defendant-respondent did not erect permanent structure in the suit premises without consent of the plaintiff-petitioner and that he did not damage the suit premises and did not do any act constituting an act of destruction and injurious to the suit premises. The trial Court was also pleased to hold that the petitioner-plaintiff did not prove his bonafide need for the suit premises and that the respondent-defendant would suffer greater hardship if decree for eviction is passed. The trial Court, however, found that the defendant was in arrears of rent. With the result, while dismissing the suit for eviction on various grounds, decree for arrears of rent came to be passed on 12.10.1993.

7. Being aggrieved by the aforesaid judgment and order, the plaintiff-petitioner herein preferred an appeal to the District Court, Solapur.

8. The learned District Judge, who had heard appeal, was pleased to confirm the findings recorded by the trial Court and was pleased to notice that the plaintiff failed to prove any of the grounds for eviction of the respondent-tenant. The lower appellate Court while considering ground leading to

bonafide need was pleased to notice that after getting the premises vacated from some other tenants landlord went on to induct several other persons as tenants in the suit house. Admission of P.W.3 was also taken into account by the Court below, wherein said witness had admitted that the landlord had let out the premises on the basis of monthly tenancy to some other persons. In short, the lower appellate Court found no material in favour of the plaintiff-landlord with regard to his bonafide need and found conduct of the landlord not warranting decree for eviction in his favour on this count, with the result, the lower appellate Court was pleased to dismiss the appeal by order dated 29.8.1998.

9. The above judgment and order is the subject matter of challenge in this petition, filed under Article 227 of the Constitution of India.

10. The petitioner, during the pendency of this petition filed two affidavits with a view to bring subsequent events on record. The perusal of these affidavits will show that grounds which were never pleaded or made out in either of the Courts below were sought to be brought on record by way of subsequent events to seek eviction of the respondent-tenant. Altogether new case is being

carved out; which was never made out even in this writ petition when it was filed.

11. Needless to mention that the subsequent events giving rise to altogether new grounds of eviction cannot be allowed to be pressed into service or raised at the stage of writ petition in the absence of basic foundations in the pleadings in the Courts below.

12. The subsequent events having direct impact on the grounds already pressed into service can only be considered. But, in this case, subsequent events sought to be brought on record cannot be considered being alien to the grounds raised in the suit.

13. Having said so, it is necessary to take note of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576**, in para 9, before considering rival submissions, wherein following observations were made:

" Before parting with this judgment,

we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or

revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

14. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the trial Court on each and every issue raised in the appeal. The lower appellate Court appreciated oral evidence and recorded findings of fact and affirmed the findings of facts recorded by the trial Court. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate Court.

15. In the above view of the matter, petition is without any substance. The same is liable to be dismissed.

16. In the result, petition is dismissed with no order as to costs.

(V.C.DAGA,J.)